"GLADIATOR" COTTON CLAIMS

STATEMENT OF MR. WILLIAM B. KING

BEFORE THE

COMMITTEE ON WAR CLAIMS

W. B. King, HOUSE OF REPRESENTATIVES

SIXTY-THIRD CONGRESS

SECOND SESSION

ON

H. R. 6066

A BILL FOR THE RELIEF OF THE OWNERS OF CERTAIN COTTON TAKEN BY THE UNITED STATES AUTHORITIES IN ADAMS COUNTY, MISS., IN 1863, AND SHIPPED AWAY ON THE STEAMER "GLADIATOR"

FEBRUARY 28, 1914

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COMMITTEE ON WAR CLAIMS.

House of Representatives.

SIXTY-THIRD CONGRESS.

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"GLADIATOR" COTTON CLAIMS.

COMMITTEE ON WAR CLAIMS,
HOUSE OF REPRESENTATIVES,
Saturday, February 28, 1914.

The committee was called to order at 11 o'clock a. m., Hon. A. W. Gregg (chairman) presiding.

STATEMENT OF MR. WILLIAM B. KING.

Mr. KING. Mr. Chairman and gentlemen of the committee, the bill, H. R. 6066, introduced by Representative Quin, of Mississippi, proposes to give to the Court of Claims jurisdiction to determine the claims of the estates of Benjamin Chase and others named for cotton taken by the United States in 1863 in Adams County, Miss., and shipped away on the steamer *Gladiator*, the court to proceed under the act of March 12, 1863, and to render judgment for the net proceeds in the Treasury. It is proposed to amend the bill by allowing all other owners of this lot of cotton to appear as well as those named, and to require the appearance of the claimants in court within one year.

For an understanding of this bill it is necessary to explain the captured and abandoned property act of March 12, 1863, and the decisions of the Supreme Court under it. On March 12, 1863, Congress passed an act known as the captured and abandoned property act (12 Stat. L., 820). That act authorized the collection by the Secretary of the Treasury of all abandoned or captured property in the insurrectionary States, except materials of war, and directed that this should be sold and the proceeds placed in the Treasury. It gave a right to any person whose property was taken under its provisions to present a claim to the Court of Claims for the return of the proceeds of that property in the Treasury. That claim could be presented any time within two years from the close of the war, and the owner must prove ownership and that he "has never given any aid or comfort to the present rebellion."

Under that act a large number of claims, almost entirely for cotton, were presented through the Court of Claims, amounting to some $77,000,000, on which judgments were ultimately rendered for $9,852,956.95. (See Report of Chief of Miscellaneous Claims Division to Secretary of the Treasury, Nov. 28, 1894, Treasury Department, Document No. 1730; Hodges *v.* United States, 18 C. Cls., 703; H. Rept. 505, 62d Cong., 2d sess.) These judgments were paid out of the net proceeds of the cotton in the Treasury.

The Court of Claims from the beginning required an allegation and proof in each case of the loyalty of the claimant. In the case of a northern man, named Padelford, residing in Savannah, the Court of Claims, after investigating his proof, declared that he was

loyal, although he had, under threats but no immediate compulsion, subscribed to the Confederate loan (4 C. Cls., 316). The case was appealed to the Supreme Court of the United States. The Government there argued that this was an act of disloyalty. The claimant maintained his loyalty in fact, but urged also that he had been pardoned by proclamation of President Johnson and that this pardon had restored his rights if he had committed any act of disloyalty, and made him as though he were loyal from the beginning.

The CHAIRMAN. Where is that case reported?

Mr. KING. In 9 Wallace, 531. The court used the following language in that decision, page 542:

> In the case of Garland (4 Wall., 333) this court held the effect of a pardon to be such "that in the eye of the law the offender is as innocent as if he had never committed the offense;" and in the case of Armstrong's Foundry (6 Wall., 766) we held that the general pardon granted to him relieved him from a penalty which he had incurred to the United States. It follows that at the time of the seizure of the petitioner's property he was purged of whatever offense against the laws of the United States he had committed by the acts mentioned in the findings, and relieved from any penalty which he might have incurred. It follows further that if the property had been seized before the oath was taken, the faith of the Government was pledged to its restoration upon the taking of the oath in good faith.

This case was followed by a number of decisions applying the same rule. These are United States *v.* Klein (13 Wall., 128), Armstrong *v.* United States (13 Wall., 154), Pargoud *v.* United States (13 Wall., 156), Carlisle *v.* United States (16 Wall., 147), Young *v.* United States (97 U. S., 39). In the Klein case the Supreme Court said (13 Wall., 142):

> We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was in no case divested out of the original owner. It was for the Government itself to determine whether these proceeds should be restored to the owner or not. The promise of the restoration of all rights of property decides that question affirmatively as to all persons who availed themselves of the proffered pardon. It was competent for the President to annex to his offer of pardon any conditions or qualifications he should see fit; but after those conditions and qualifications had been satisfied, the pardon and its connected promises took full effect. The restoration of the proceeds became the absolute right of the persons pardoned on application within two years from the close of the war. It was, in fact, promised for an equivalent. "Pardon and restoration of political rights" were "in return" for the oath and its fulfillment. To refuse it would be a breach of faith not less "cruel and astounding" than to abandon the freed people whom the Executive had promised to maintain in their freedom.

In the Armstrong case the court said (13 Wall., 155):

> We have recently held, in the case of the United States *v.* Klein, that pardon granted upon conditions, blots out the offense if proof is made of compliance with the conditions, and that the person so pardoned is entitled to the restoration of the proceeds of captured and abandoned property, if suit be brought within "two years after the suppression of the Rebellion." The proclamation of the 25th of December granted pardon unconditionally and without reservation. This was a public act of which all courts of the United States are bound to take notice, and to which all courts are bound to give effect. The claim of the petitioner was preferred within two years. The Court of Claims, therefore, erred in not giving the petitioner the benefit of the proclamation.

In the Carlisle case the court said (16 Wall., 153):

> After these repeated adjudications, it must be regarded as settled in this court that the pardon of the President, whether granted by special letters or by general proclamation, relieves claimants of the proceeds of captured and

abandoned property from the consequences or participation in the rebellion, and from the necessity of establishing their loyalty in order to prosecute their claims. This result follows whether we regard the pardon as effacing the offense, blotting it out, in the language of the cases, as though it had never existed, or regard persons pardoned as excepted from the general language of the act, which requires claimants to make proof of their adhesion, during the rebellion, to the United States.

In the Young case the court said (97 U. S., 68):

We have decided that the pardon closes the eyes of the courts to the offending acts, or, perhaps more properly, furnishes conclusive evidence that they never existed as against the Government.

The CHAIRMAN. How do you differentiate between that captured and abandoned property act in its requirement of loyalty and the Bowman Act in regard to loyalty?

Mr. KING. The differentiation as made by the courts I will explain. In the captured and abandoned property act the question of loyalty was a question affecting the property right. The Supreme Court, therefore, held that neither Congress nor the courts could limit the constitutional effect of a pardon by the President and prevent its making him as though he were loyal from the beginning. So far as the property right was concerned, the cotton fund was in its nature a trust fund. It was money derived from the sale of the property placed in the Treasury.

The CHAIRMAN. How much is left of it?

Mr. KING. That is an extremely difficult question to answer. There are three different estimates on the subject, one made by the Court of Claims, of $10,512,007.96 (Hodges *v.* United States, 18 C. Cls., 706; H. Rept. 505, 62d Cong., 2d sess.), and one made by the Treasury Department, of $4,208,398.17, stated in the report already mentioned. There is still another Treasury estimate of about $14,410,429.17, printed in House Report 1820, Fifty-third Congress, third session, page 25. I do not think anyone knows which is right.

Mr. SLEMP. I do not think you completed your answer to the chairman.

Mr. KING. No; I did not. The decision of the Supreme Court was that, as the act of 1863 declared loyalty a matter affecting the property right, so the pardon in restoring the loyalty restored the property right. When Congress passed the Bowman Act (22 Stat. L., 485) it declared, section 4, that in every claim for stores and supplies taken during the Civil War the claimant must allege and prove loyalty as a jurisdictional fact and that, if the court should not find him loyal, it should have no further jurisdiction and dismiss the petition.

The CHAIRMAN. That was done to avoid the effect of the decision?

Mr. KING. Yes, sir; because the uniform rule laid down by Congress in regard to claims for stores and supplies was to exclude those who had adhered to the Confederacy. (See acts of July 4, 1864, 13 Stat. L., 381; Mar. 3, 1871, 16 Stat. L., 524.)

Mr. SLEMP. Was that ever tested out?

Mr. KING. Yes. In the Austin case (155 U. S., 417) that question came before the Supreme Court. It could not go before the Supreme Court under the Bowman Act because cases under the Bowman Act are not appealable to the Supreme Court. In the Austin case the claim was for the proceeds of captured cotton. The

Austin heirs secured the passage by Congress of a special act authorizing them to go into the Court of Claims. (Mar. 3, 1883, 22 Stat. L., 804.) The bill contained the following proviso:

Provided, however, That it be shown to the satisfaction of the court that neither Sterling T. Austin, sr., nor any of his surviving representatives, gave any aid or comfort to the late rebellion, but were throughout the war loyal to the Government of the United States.

The Court of Claims found (25 C. Cls., 437) that Austin had not adhered consistently to the Union side. They therefore dismissed the petition and the case went to the Supreme Court. In the Supreme Court it was argued for the claimants that the Padelford, Klein, Carlisle, and other cases settled the question of his loyalty, because, if he had been disloyal, he had been pardoned. The Supreme Court differentiated between property rights and the jurisdiction of the courts. They said (155 U. S., 432) that the proviso above quoted—

* * * operated upon the entire enacting clause, and made loyalty a jurisdictional fact, since the consent to the prosecution of the suit was given upon the condition that that fact should be established.

It added (p. 432):

In declining to bestow jurisdiction in favor of pardoned offenders, whose claims were barred, Congress did not deny its proper constitutional effect to amnesty. To whom the privilege of suit should be accorded was for Congress alone to determine.

But it stated (p. 432) in order to forbid any possible contention that this decision lessened the authority of the Klein decision:

Undoubtedly Congress framed this act with due regard to the state of decision under the prior act, and hence, instead of making proof of loyalty an integral part of claimant's case with his ownership of the property and his right to the proceeds, as in the captured and abandoned property act, it made the establishment of loyalty in fact, as contradistinguished from innocence in law produced by pardon, a prerequisite to jurisdiction. Consent to be sued was given on this condition.

On these grounds, while upholding the previous decisions as to the effect of a pardon on claims under the captured and abandoned property act of March 12, 1863, the right of Congress is recognized to limit the jurisdiction of courts by a distinction based on loyalty in fact.

In the course of the opinion, the Bowman Act was quoted (p. 429), and this statement was made in regard to it (p. 432):

Again it is argued that because in the fourth section of the general act of March 3, 1883, the fact of loyalty was stated to be "a jurisdictional fact," therefore the proviso of the Austin Act should not be construed to have that effect, because, while the same language was used as to the existence of loyalty, its establishment was not in terms expressed to be jurisdictional. But the structure of the two acts was different and required different treatment, and the special act can not properly be construed as if it were a general act and part of a general system and the change of phraseology in this particular significant. On the contrary, as we have no doubt that the effect of the proviso is such as we have attributed to it, we think the argument for the Government not unreasonable that Congress, in employing the same language in both acts as to the condition of loyalty, did so in effectation of a common object to be attained by the requirement.

Now, in regard to the distinction, I will give a direct answer to the chairman's question by saying that a distinction is made by the courts between loyalty as a matter of property right and loyalty as a matter of jurisdiction; that where it is made a property right, the

courts will consider the pardon as equivalent to loyalty; where it is a matter of jurisdiction, loyalty in fact must be found.

The CHAIRMAN. Was the Austin case decided before the passage of the Bowman Act.

Mr. KING. No, sir; the Austin special act and the Bowman Act were passed on the same day.

Mr. SLEMP. How do you differentiate between claims for property taken from citizens who were disloyal?

Mr. KING. If the bill providing payment for claims for stores and supplies and giving jurisdiction to the Court of Claims to pass upon them was passed in the same terms as the captured and abandoned property act, I can not see why the decisions under the captured and abandoned property act should not be held to apply to those claims. In other words, in spite of the fact that there is some difference between claims for the net proceeds of cotton in the Treasury and claims for stores and supplies, arising out of the fact that the captured and abandoned property money is in the Treasury and constitutes a trust fund, I think the principle as to the effect of a pardon applies, and that if the courts were given the same jurisdiction over claims for stores and supplies that were given over the claims under the captured and abandoned property act the same result must follow. They have, in fact, never been given the same jurisdiction. Whatever jurisdiction the Court of Claims has ever had in stores and supplies cases has been restricted to a finding of the facts, and, under the Bowman Act, further jurisdiction was denied unless a finding of loyalty was made.

The CHAIRMAN. In other words, he was denied access to the courts?

Mr. KING. Yes.

Mr. SLEMP. You do not see any conflict between the decisions of courts on the subject?

Mr. KING. No. I think the Supreme Court has pointed out an exact line of discrimination. Now, the Court of Claims has recently (Lincoln, adm'r, *v.* United States, decided Feb. 9, 1914, not yet published), in a decision under section 161 of the Judicial Code, applied the decisions of the Supreme Court as to the effect of pardon to claims authorized to be considered by the court for cotton taken after June 1, 1865. The right of presenting a claim for cotton taken after that date was granted to claimants by the Judicial Code of March 3, 1911.

The CHAIRMAN. And the question of loyalty does not come in?

Mr. KING. No, sir.

The CHAIRMAN. Regardless of loyalty?

Mr. KING. They have just declared that disloyalty does not bar under that statute.

The claim which I am asking the committee to consider to-day is of persons who do not claim to have been loyal during the war. They and their families participated in the rebellion. They were residents in the vicinity of Natchez, Miss. Their cotton was gathered up before the occupation of Vicksburg, along during the year 1863, and was shipped in one lot to Cincinnati on the steamer *Gladiator*.

Mr. LOBECK. May I ask you a question? Did the Government troops give any receipts to these people?

Mr. KING. Not generally. It was the exception and not the rule when receipts were given. This lot of cotton consisted of 1,363 bales, of which 351 bales belonged to the Confederate Government, for

which no claim, of course, can be asserted. The total amount realized from the cotton, after deducting all expenses, was $361,003.04, this being the net proceeds in the Treasury. The share of private owners, leaving out the Confederate cotton, 351 bales, would be the proportionate part of the above net proceeds arising from the remaining 1,012 bales, or $268,037.47. That money stands in the Treasury to the credit of the owners of that lot of cotton that was shipped on the steamer *Gladiator*.

Mr. SLEMP. Will you insert in the record proof of the statements you are making?

Mr. KING. Yes. These are shown by records in the Court of Claims which we have already filed with the committee. The evidence on this subject is in the reports of the special commissioner of the Court of Claims, of which certified copies have been filed with the committee.

Now, I will answer the question as to why these claimants did not present their claims. One of the claimants did, J. P. Ashford, and recovered judgment for $23,569.43 (8 C. Cls., 566). The others did not, because at the close of the war and until the decision of the Supreme Court in the Padelford case, in 1870, they did not know that their pardon was equivalent to antecedent loyalty. The act of March 12, 1863, gave "two years after the suppression of the rebellion" in which to sue, and the war ended on August 20, 1866, according to the decision of the Supreme Court in The Protector (12 Wall., 700). The limitation had therefore expired nearly two years before the Padelford decision. They had no means of knowing under this statute that the right had been granted to them, and they did not know.

The CHAIRMAN. Mr. King, is that an inference or a matter of fact?

Mr. KING. That is an inference. We have not produced any papers from them to show that, but it is an historic fact that those who had participated in the rebellion did not know that the effect of the pardon was to give them their rights under the captured and abandoned property act.

The CHAIRMAN. Is there any difference in the statute, so far as loyalty is concerned, between the one that was paid and the ones who were not paid?

Mr. KING. He alleged his loyalty when he filed his claim. Whether he took testimony to prove it before the decision in the Padelford case I could not say, but as the judgment was obtained in 1872, long after the decision of the Supreme Court in that case, it is not probable that he did.

These other claimants say that this is ample reason for their not having presented their claims. This committee has in numerous past Congresses recognized that as a sufficient reason for repeatedly reporting general bills to reopen the captured and abandoned property fund and allow all claimants to make claim for their cotton. See numerous reports of committees of both Houses of Congress to this effect. (H. Rept. 1377, 52d Cong., 1st sess.; H. Rept. 181, 53d Cong., 2d sess.; S. Rept. 1634, 55th Cong., 3d sess.; S. Rept. 11, 56th Cong., 1st sess.; S. Rept. 1292, 57th Cong., 1st sess.; S. Rept. 1861, 58th Cong., 2d sess.; S. Rept. 3290, 59th Cong., 1st sess.; H. Rept. 1075, 60th Cong., 1st sess.; H. Rept. 505, 62d Cong., 2d sess.)

Mr. SLEMP. Do you ask this committee to relieve these claimants of laches?

Mr. KING. Yes, sir; but their delay could hardly be called laches, because it arose under peculiar circumstances, under want of knowledge of a difficult and novel point of constitutional law. No one can be accused of a want of acumen or of diligence because he did not anticipate these decisions of the Supreme Court.

The CHAIRMAN. You spoke of the whole fund being about $77,000,000 and that there might be $4,000,000 or $8,000,000 of it left. A very large number, then, did get in their claims within two years?

Mr. KING. The whole amount of claims presented in the two years was about $77,000,000. The judgments rendered under those $77,000,000 of claims amounted to $9,852,956.95. The balance of the fund remaining undistributed is between $4,000,000 and $10,000,000. I insert here a table taken from House Report 1377, Fifty-second Congress, first session, reprinted in Senate Report 3290, Fifty-ninth Congress, first session.

The following statement is believed to be substantially correct and will show the whole amount of money received into the Treasury on account of captured and abandoned property and the amounts paid out from time to time:

Whole amount of abandoned and captured property sales		$31,722,466.20
Cost of collecting, sale, and other expenses	$6,551,000.00	
Transferred to Freedman's Bureau	243,000.00	
Internal-revenue taxes and commercial intercourse fees	1,406,000.00	
Released to claimants by Secretaries Chase, Fessenden, and McCulloch	2,550,675.24	
		10,750,675.24
Balance covered into Treasury under resolution of Mar. 30, 1872		20,971,790.96
Paid on special acts of relief	290,906.32	
Paid on judgments against Treasury agents	64,557.27	
Paid on judgments under act of Mar. 12, 1863	9,833,423.16	
Paid by Secretary of the Treasury under act of May 18, 1872	195,896.25	
Disbursed for expenses under joint resolution of Mar. 30, 1868	75,000.00	
		10,459,783.00
Balance in Treasury		10,512,007.96

This table is taken from the opinion of the Court of Claims in Hodges *v.* United States (18 C. Cls., 706). It is by Judge (afterwards Chief Justice) Richardson, formerly Secretary of the Treasury, recognized as the highest authority on all matters of Government accounting.

The report of a subordinate Treasury official already referred to (Nov. 28, 1904, Treasury Department Doc. No. 1730) gives the following statement:

Proceeds in Treasury from all sources		$26,887,970.21
Deduct as follows:		
Premium on gold	$2,571,090.25	
Profits on cotton purchased	3,441,548.09	
Amounts advanced by Treasury	2,445,549.84	
Miscellaneous property	1,309,650.69	
Rents	613,284.96	
Miscellaneous receipts	110,841.30	
Other receipts, sale of vessels, etc	1,438,526.39	
		11,930,491.52
Leaving as cotton fund proper		14,957,478.69

* * * * *

Deduct from this payment, made as stated in report of Feb. 14, 1889, p. 2 (the Okey report), as follows:		
Judgments under act Mar. 12, 1863	$9,852,956.95	
Judgments against Treasury agents under act July 27, 1868	65,276.79	
Disbursed as expenses under section 3, joint resolution Mar. 30, 1868, and subsequent acts	242,140.34	
Paid under special acts of Congress	256,766.82	
On claims allowed by the Secretary under section 5, act May 18, 1872	195,896.21	
		$10,613,037.11
Leaving of the cotton fund Feb. 14, 1889		4,344,441.58
Since that date payments have been made as follows:		
Judgment Court of Claims, Duffy, Sophia B. (Rept. C. C., 24275)	$15,270.00	
Newman, John H., heirs, under private act (25 Stat, p. 1310)	32,669.20	
Briggs, James M., executor C. M. Briggs, under private act, paid Mar. 24, 1894	88,104.21	
		136,043.41
Amount in the cotton fund at this date		4,208,398.17

Another statement was made by the Treasury Department February 27, 1874 (see H. Rept. 1820, 53d Cong., 3d sess., p. 25) as follows:

Gross proceeds of captured and abandoned cotton, including premium on coin proceeds	$21,500,000.00	
Expenses of collection, sale, etc	3,000,000.00	
Net proceeds		$18,500,000.00
Gross proceeds of miscellaneous property	1,375,000.00	
Expenses of collection, sale, etc	86,000.00	
Net proceeds		1,289,000.00
Miscellaneous receipts, rents of abandoned houses, etc		1,121,656.44
Total amount covered in from above sources		20,910,656.44
Refunded to claimants upon awards of the Court of Claims under section 3, act of Mar. 12, 1863	$6,300,463.80	
Refunded to claimants upon awards of the Secretary of the Treasury under section 5, act of May 18, 1872	97,734.10	
Paid for expenses, etc., under section 3, joint resolution of Mar. 30, 1868	75,000.00	
Upon judgments of United States circuit court, New York, under act of July 27, 1868	27,029.37	
Amounting in the aggregate to		6,500,227.27
The balance of said fund still remaining in the Treasury is		14,410,429.17

The CHAIRMAN. Was the entire amount paid out on these cotton-claim cases? Was the entire amount paid out by application made within the statutory limits, or has some money been paid out on applications made subsequent?

Mr. KING. The judgment for $9,852,956.95 were in claims filed during the statutory limit. A small amount was paid out under later special acts that Congress passed allowing claimants to go into

the court or to the Treasury Department for that purpose. The tables above show the details.

The CHAIRMAN. Then, as I understand, this committee has precedents?

Mr. KING. Yes; there are three or four cases in which special acts have been passed.

The CHAIRMAN. Not relating to the *Gladiator* cases, but to other cases?

Mr. KING. Yes, sir.

Mr. UNDERHILL. What was the value of the cotton seized belonging to the Confederacy?

Mr. KING. The Treasury report already referred to says that this was $4,690,774.79.

Mr. UNDERHILL. Was that on the basis of the one estimate you spoke of? All the private cotton has been paid for and distributed?

Mr. KING. That is the claim made in the report of the Treasury Department referred to.

Mr. UNDERHILL. I want to inquire whether this cotton fund is in the general fund of the Treasury, or whether it is is in a distinct fund by itself?

Mr. KING. It is kept in a distinct fund, as a matter of bookkeeping. In 1868 it was found that the Secretary of the Treasury had been exercising what he believed to be a lawful discretion in doing what he called "restoring" captured cotton to the owners. Congress thought jurisdiction should be limited to the Court of Claims, and thereupon Congress passed an act covering the fund into the Treasury, but it is still referred to officially as the captured and abandoned property fund.

The CHAIRMAN. And there is a separate account kept of it?

Mr. KING. Yes; that sufficiently appears from the extracts from the official reports which I have inserted in the records.

Now, I was going on to say why these claims embraced in the pending bill, H. R. 6066, should have special consideration. We have shown that there was a special fund that came from this particular lot of cotton. This committee has previously reported general bills for all such claims, but these bills have never got any further than the calendar, for some reason. I do not know what the reasons are, but undoubtedly the House has not passed the general bills.

Since the justice of the claims has been repeatedly recognized by reporting the general bills; since the House has heretofore declined to pass the general bills; and since there is a special fund in the Treasury derived from the sale of this particular cotton, then we ask the committee to do justice measurably to us by permitting these particular claimants to have a special bill allowing them to go to the Court of Claims.

The CHAIRMAN. Is that not a discrimination in their favor?

Mr. KING. I think it will be fair to discriminate in favor of any particular claimants who may come to you and make a showing that there is one particular unused fund in the Treasury arising from the sale of their cotton, out of which they ask payment. If anyone else comes along with a parallel case I should say that they should be entitled to it also.

Mr. SLEMP. There is no discrepancy between the amount of money in the so-called trust fund and the amount of legitimate claims, is there?

Mr. KING. That is a very complicated and difficult matter to determine, and it would only be after a very careful computation by Treasury experts and court officers that these questions could be settled. There are complications that have arisen growing out of the payment of claims from the cotton funds. In this particular case no such question can arise because the Government seized this cotton. It was sold by the Government and the money is in the Treasury as a trust fund, a particular fund derived from the sale of this cotton to cover these claims.

Mr. UNDERHILL. Do you not understand the Austin case to decide that the claimant must prove loyalty in fact, and that the general proclamation is not sufficient?

Mr. KING. It decides that, under the language of the statute in that particular instance, the claimant was obliged to prove loyalty in fact, as a test of jurisdiction under the statute.

Mr. UNDERHILL. A special act authorizing the heirs to sue?

Mr. KING. Yes; a special act.

Mr. UNDERHILL. And that grows out of the wording of that special act?

Mr. KING. Yes. The opinions of the Supreme Court declare a discrimination between the Austin special act and the Bowman act on the one hand and the captured and abandoned property act on the other. These claims are under the captured and abandoned property act.

Mr. UNDERHILL. The decision seems to indicate that they required absolute loyalty in fact.

Mr. KING. Let me read some extracts from the decisions of the Supreme Court in the Austin case. Referring to the proviso in the Austin special act it said (155 U. S., 432), that it—

> * * * operated upon the entire enacting clause and made loyalty a jurisdictional fact, since the consent to the prosecution of the suit was given upon the condition that that fact should be established.

Then the court discriminated between this Austin and the captured and abandoned property act by saying:

> Undoubtedly Congress framed this act with due regard to the state of decision under the prior act, and hence, instead of making proof of loyalty an integral part of claimant's case with his ownership of the property and his right to the proceeds, as in the captured and abandoned property act, it made the establishment of loyalty in fact, as contradistinguished from innocence in law produced by pardon, a prerequisite to jurisdiction. Consent to be sued was given only on this condition.

Mr. LEWIS. This committee meeting, I believe, is called specially to consider the Frederick City (Md.) war claims, and if Mr. King has presented his claim substantially I think we should go on.

Mr. JOHNSON. I suppose we will have to adjourn pretty soon, and I move that Mr. King be allowed to complete his statement in the time we have.

Mr. KING. I think that is all I have to say, unless the committee have some further questions they wish to ask.

Mr. SLEMP. What is the amount of this claim?

Mr. KING. Something over $250,000.

Mr. SLEMP. Will you put in the record the exact amount?
Mr. KING. Yes.

Total cotton taken	bales	1,363
Confederate cotton included in this	do	351
Balance is private cotton	do	1,012
Total fund derived from the sale of this cotton		$361,003.04
Proportionate share due to 1,012 bales		$268,037.47
Judgment paid to J. P. Ashford (S C. Cls., 566)		23,569.43
Balance claimed		244,468.04

Mr. LOBECK. And the basis of your claim is that this very cotton was shipped on board the *Gladiator*, and that the proceeds from the sale thereof were put into a trust fund to pay these people if they were entitled to it?

Mr. KING. Yes, sir.

Mr. SLEMP. Do you absolutely trace that particular cotton into the trust fund?

Mr. KING. Yes; the papers that we have in the records of the Court of Claims, and we think the records show that it was absolutely this cotton. I would like to ask that the papers which I have submitted be filed with my statement so that they can go into the statement as a part of the record.

The CHAIRMAN. Very well; that can be done.

Mr. KING. I thank you very much, gentlemen.

(Thereupon the committee proceeded to the consideration of other business.

The following are the papers mentioned:)

STATEMENT IN SUPPORT OF A BILL FOR THE RELIEF OF THE OWNERS OF CERTAIN COTTON TAKEN BY THE UNITED STATES AUTHORITIES IN ADAMS COUNTY, MISS., IN 1863 AND SHIPPED AWAY ON THE STEAMER "GLADIATOR."

This bill proposes to give jurisdiction to the Court of Claims to hear and determine the claims of Benjamin Chase and others for cotton taken by the United States authorities in Adams County, Miss., in 1863. These are claims arising under the captured and abandoned property act of March 12, 1863 (12 Stat. L., 820). The original claimants were planters who raised considerable cotton in the years 1861 and 1862, but owing to the blockade they were unable to ship it out of the Confederacy. It remained on their plantations, not far from Natchez, Miss., until early in the year 1863, when the prospect of Federal occupation of the country obliged them, under military orders, to remove the cotton farther back from the Mississippi River.

Upon the occupation of Natchez, Miss., by the United States forces, military parties were sent to search for cotton, and the place of storage of this cotton was found, the cotton taken by military officers, delivered at Natchez, and from there shipped to Vicksburg on the steamer *Gladiator*, and afterwards transmitted to Memphis and turned over by the military authorities to the agents of the Treasury Department. The quantity was 1,363 bales. The cotton was sold at public auction, and the proceeds of it are now in the Treasury.

A claim was filed by the estate of J. P. Ashford, one of the owners of the cotton so taken, within the time limited by the act of March 12, 1863, two years from the close of the Civil War. A judgment was rendered in favor of his administrator by the Court of Claims for $23,569.43. (Vol. 8, Cl Cls. R., p. 566.)

The other owners of this cotton did not file any claims for it, because the act of March 12, 1863, made proof of loyalty to the United States throughout the Civil War a condition to the recovery of the net proceeds in the Treasury.

The Supreme Court of the United States, at the December term, 1869, decided in United States *v.* Padelford (9 Wall., 531) that the pardon granted to claimant in that case by the President of the United States after the close of the war relieved him from all offense arising from acts of disloyalty and made

him "as innocent as if he had never commited the offense." The Supreme Court said (p. 543):

"It follows further that if the property had been seized before the oath was taken, the faith of the Government was pledged to its restoration upon the taking of the oath in good faith. We can not doubt that the petitioner's right to the property in question, at the time of the seizure, was perfect, and that it remains perfect, notwithstanding the seizure."

In a later case, United States *v.* Klein (13 Wall., 128), the Supreme Court said further on this point (p. 142):

"We conclude, therefore, that the title to the proceeds of the property which came to the possession of the Government by capture or abandonment, with the exceptions already noticed, was in no case divested out of the original owner. It was for the Government itself to determine whether these proceeds should be restored to the owner or not. The promise of the restoration of all rights of property decides that question affirmatively as to all persons who availed themselves of the proffered pardon. It was competent for the President to annex to his offer of pardon any conditions or qualifications he should see fit; but after those conditions and qualifications had been satisfied, the pardon and its connected promises took full effect. The restoration of the proceeds became the absolute right of the persons pardoned on application within two years from the close of the war. It was, in fact, promised for an equivalent. 'Pardon and restoration of political rights' were 'in return' for the oath and its fulfillment. To refuse it would be a breach of faith not less 'cruel and astonding' than to abandon the freed people whom the Executive had promised to maintain in their freedom."

Applying these decisions of the Supreme Court, the right of these claimants to the net proceeds in the Treasury of their cotton becomes clear. The money in the Treasury is held as a trust in their favor, and payment was due to them upon pardon. Unfortunately, the decision of the Supreme Court in the case first cited was not rendered until more than two years after the "suppression of the rebellion," the period limited by the act of March 12, 1863, for the presentation of the claims. They therefore found themselves when this decision was rendered with an admitted right, but with no remedy available.

General bills for the relief of this class of claimants have been pending before Congress for many years, and have repeatedly been reported favorably by the committees in both Houses of Congress. In the Fifty-sixth Congress Senate bill 3684 for the relief of these claimants was referred to the Court of Claims under the provisions of section 14 of the act of March 3, 1887, commonly called the Tucker Act (24 Stat. L., 505). Upon the presentation of petitions to the Court of Claims under this reference, congressional case No. 10110, the claims were dismissed from jurisdiction by the court on the ground that the bill referred was not sufficiently specific in naming the claimants.

A second reference was made in the Sixtieth Congress of Senate bill 5522, in which the claimants were named, and a motion to dismiss the petitions was allowed on the ground that the Court of Claims had no jurisdiction under this act of 1887 to claims for captured and abandoned property arising under the act of March 12, 1863.

A very strong dissenting opinion upon this point was filed by Judge Howry and a second opinion upon a motion for rehearing. (See Brandon, administrator, *v.* United States, 46 C. Cls., 559; 47 C. Cls., 403.)

A careful examination of these two opinions shows very strong ground for the dissent on the part of Judge Howry. His opinion plainly shows that the court reversed a carefully considered decision in an earlier case, admitting a claim under the act of March 12, 1863, to jurisdiction under the act of 1887.

The claimants now ask that Congress grant them special relief and permit them to sue in the Court of Claims, notwithstanding their failure to apply to that court within two years from the close of the Civil War. The reasons for asking the waiver of the statute of limitations in their favor is that the decision of the Supreme Court declaring that a pardon was sufficient proof of loyalty under the act of March 12, 1863, was not made in time for them to obtain the benefit of that act.

Section 162 of the Judicial Code of March 3, 1911, grants the same right to one class of cotton claimants under the act of 1863, to wit, those whose claims originated after June 1, 1865. The relief here asked rests upon the same principle as that granted by this section.

A special reason why relief should be granted as provided by this bill is shown by the records of the Court of Claims in a report made by the special

commissioner of that court charged with the investigation of cotton claims under the act of March 12, 1863, in which it appears that the cotton taken in and around Natchez, Miss., has been traced into the Treasury, and that the money for the payment of the claims embraced in this bill stands to the credit of the claimants who can prove their title to it.

These claimants took a large amount of testimony under the rules of the Court of Claims before their petitions were dismissed showing very clearly that their cotton was a portion of the cotton making up the lot of 1,363 bales reported by this special commissioner. Extracts from this report and the order of the court approving them accompany this statement.

[United States Court of Claims. December term, 1874.]

SUNDRY COTTON CASES.

SECOND REPORT OF SPECIAL COMMISSIONER.

In pursuance of the order of this court, dated on the 4th day of June, 1873, appointing me a special commissioner for certain purposes therein set forth, I submit the above-entitled causes and the following report, embracing transactions in regard to cotton captured in the State of Mississippi during the years 1863, 1864, and 1865, the records not exhibiting any captured in the year 1862.

* * * * * * *

FIRST FUND.

The most of the cotton included in this report was captured in the vicinity of Vicksburg, Miss., and was transported to that city. From there it was shipped generally to Memphis, Tenn., and thence to St. Louis and Cincinnati for sale.

The collection of cotton in that locality began in June, 1863, about the time the Army surrounded the city of Vicksburg, and continued until about July, 1865. A very large quantity of captured cotton was used by the Army of the United States for defensive purposes in the vicinity of Vicksburg. After the surrender of Vicksburg this cotton, or as much of it as could be saved, was collected and transported to Vicksburg. The work of gathering cotton from the defenses around Vicksburg continued until about the 1st of November, 1863, and after that date small quantities were received, and even as late as March, 1864, a few bales were dug out and brought in from those defenses.

The testimony shows that during the strife in the counties surrounding Vicksburg the people were in the habit of concealing their cotton in swamps and forests to protect it from the torches of the Confederates and also from the hands of the Union Army. During the latter part of the year 1863 and during the year 1864 much of this concealed cotton was discovered by the military forces of the United States and by the Treasury officials, and was seized and conveyed by them to Vicksburg and Natchez.

Neither the records of the department nor the depositions of witnesses filed in the various cases enable me to determine how long the various lots of cotton remained in Vicksburg before shipment to the North for sale. But I find that large masses of cotton were stored in warehouses and piled up on wharves in Vicksburg for indefinite periods of time, and I am led to the belief that large quantities of cotton were retained in Vicksburg many months before shipment to Memphis, St. Louis, and Cincinnati.

I find that a large quantity of cotton was, immediately after seizure, sent to Natchez, but the greater part, if not all, of such cotton was reshipped, sooner or later, to Vicksburg; at this point it was intermingled with the mass of cotton accumulated in that city, except as to lot 121, hereinafter mentioned.

* * * * * * *

Respectfully submitted to the honorable Court of Claims by

E. EVELETH, *Commissioner.*

WASHINGTON, D. C., *March 2, 1875.*

* * * * * * *

Reported November 1, 1863.

1863.—Record lot 121, 1,363 bales of captured cotton, various marks.

This lot was shipped August 31 from Vicksburg, Miss. (but supposed to have been forwarded from Natchez to Vicksburg), by Capt. G. L. Foot, A. Q. M., Vicksburg, on the steamer *Gladiator*, consigned to Capt. A. R. Eddy, A. Q. M.,

Memphis, and by him turned over to the Treasury Department at Memphis, 1,343¼ bales. After being repaired by the Treasury Department, it made 1,363 bales. The same was turned over to this department as cotton captured or seized by the military authorities, as per my receipts given.

The following is all the old marks that was on the same when received: C. S. A., 351; est. J. P. Ashford, 63; H. C. Hase, 2; Deer Park, 61; Springfield, 15; E. P. B., 7; L. A. Grier, 3; John Minor, 1; B. Chase, 9; H. T., 1.

No further history is known in regard to this lot. The same was shipped by Special Agent Yeatman to Supervising Special Agent Mellen, Cincinnati, as follows:

	Bales.
Sept. 8, shipped on steamer *Lady Franklin*	400
Sept. 8, shipped on steamer *Norman*	400
Sept. 11, shipped on steamer *Jewess*	100
Sept. 15, shipped on steamer *Sunshine*	463
Total	1,363

This last lot was shipped to Cincinnati, via Cairo, care of D. Arter, Cairo; from Cairo to Cincinnati by rail; freight and charges as follows, to wit:

Paid W. H. Thomson & Co., Government warehouse agents, as per bill rendered	$2,702.65
Quartermaster's Department on same (1,343¼ bales) as per bill rendered, at $10 per bale	13,437.50
	16,140.15

TH. H. YEATMAN,
Assistant Special Agent, Treasury Department.

Received.

1863. September 21. Sold at public auction, after due notice and publication, a portion of lot 121, consisting of 400 bales, received p. *Lady Franklin*, as p. foregoing record, as follows:

* * * * * * *

400 bales, 176,306	$111,989.32
Charges	14,895.59
Net proceeds	97,093.73

* * * * * * *

October 19. Sold at public auction, after due notice and publication, a portion of lot 121, consisting of 960 bales:

* * * * * * *

960 bales, weighing 397,120	$303,053.30
Charges	39,143.99
	263,909.31

* * * * * * *

Reported February 1, 1864.

November 16. Sold at public auction, after due notice and publication:

3 bales cotton left over from last sale.	
1 less, stolen or lost.	
2 bales sold J. Gotlieb, weighing 422,278=700 at 43	$301.00
Charges	44.47
Net proceeds	256.53

In addition to the foregoing, it is stated by Lieut. J. E. Jones, acting assistant quartermaster, United States Army, in voucher No. 46 of abstract E of his property returns for the month of September, 1863, that he was ordered by Col. Bingham to receive this cotton and forward it to Memphis; that he never receipted for it, and "that Lieut. Nichols was the man who shipped it from Natchez, Miss."

Information of the date at which Lieut. Nichols shipped this cotton from Natchez, or of the source whence he obtained it, can not be supplied, since it is not furnished in returns rendered by Lieut. Jones, and if Lieut. Nichols ever

rendered any property returns accounting for this cotton they are not on file in the Treasury Department nor in the Office of the Quartermaster General of the Army.

On the 31st of August, 1863, Lieut. Jones transferred this cotton to Capt. G. L. Fort. A. Q. M., who shipped it from Vicksburg, Miss., on the steamer *Gladiator*—the steamer on which it was shipped from Natchez—consigned to Capt. J. V. Lewis, A. Q. M., at Memphis, Tenn., by whom it was transferred to the Treasury agent, Mr. Thomas H. Yeatman.

* * * * * * *

Extract from the order of the court of May 24, 1875, to wit:

"And it is further ordered that the engrossed and consolidated copy of the reports of the commissioner as amended by this order, filed herewith, stand as the findings of fact of the court."

UNITED STATES OF AMERICA, *ss:*

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing sheets numbered from 1–5 are a true copy of extracts from the consolidated report of Commissioner Evan Eveleth, filed in said court May 24, 1875, and of the order of the court upon said report, dated May 24, 1875.

Witness my hand and the seal of this court this 15th day of May, 1913.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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